doer. That is to say, though Mrs. Bradley was rightfully in possession and though the mortgage debt had not in fact been paid, the bar of the statute as to the deed is held to be efficacious in turning Mrs. Bradley into a trespasser as respects the mortgagor, who, not having in fact paid anything, is treated as having made payment by the mortgagee's bid, and being at the same time entitled to assert the failure of the purchase by reason of *laches* in taking out the deed.

And yet because a statute may take away the sword which a deed would give a mortgagee out of possession, it does not follow that it can lawfully operate on prior transactions so as to take away the shield afforded by possession. Rightful possession is a defense in ejectment, *Sands* v. *Wacaser*, 149 Ill. 530, 533, and cases cited, and Mrs. Bradley's possession could only be treated as wrongful as against the original mortgagor by the application of the subsequent law.

As we have said, when Mrs. Bradley took this mortgage there was no statutory limitation as to the time within which a master's deed must be taken out, and no loss of right by reason of failure to do so was prescribed. After she had filed her bill, and while she was in possession, the act of 1872 went into effect, and, it may be conceded, limited Mrs. Bradley's right to obtain a deed on foreclosure sale and so far affected any remedy through a deed she might have had. But, reading the act, as the view of the Supreme Court compels us to do, as taking away her right to maintain her possession, we are of opinion that it materially impairs the obligation of her contract, and deprives her of property without due process.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.

No. 306.

Lydia Bradley, Plaintiff in Error, *vs.* H. W. Lightcap. } In error to the Supreme Court of the State of Illinois.

[May 31, 1904.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

After the decision reported 186 Ill. 510, Mrs. Bradley filed her bill in equity in the Circuit Court of Fulton County, Illinois, to quiet her title to the land in controversy in the action in ejectment and for appropriate relief. The bill was dismissed on demurrer and Mrs. Bradley carried the case to the Supreme Court of Illinois, which affirmed the decree below. *Bradley*

v. *Lightcap*, 202 Ill. 154, April 24, 1903. Three of the members of the court dissented. The opinion of the Supreme Court proceeded on the strength of the decisions in 186 Ill. 510, and 201 Ill. 511.

As we have reversed the judgment in the prior case, this case must take the same course.

Decree reversed and cause remanded for further proceedings not inconsistent with our opinion in No. 243.

No. 343.

Lydia Bradley, Appellant, *vs.* H. W. Lightcap. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[May 31, 1904.]

Mr. Chief Justice FULLER delivered the opinion of the Court:

This was a bill filed by Mrs. Bradley, to quiet her title to the premises in controversy in No. 243, and for appropriate relief, in the Circuit Court of the United States for the Northern District of Illinois, and was dismissed for want of jurisdiction, May 22, 1902.

The Circuit Court, Grosscup J., was of opinion that the statute of 1872 was not one of limitation in the same sense as a statute limiting the time within which foreclosure proceedings must be brought; that the failure to take out the deed within five years raised no presumption that the mortgage debt had been paid; and that the act was, in effect, simply a limitation on the time within which the foreclosure decree could be availed of, and did not operate to forfeit the mortgagee's title to the mortgagor if the deed were not taken out. But he thought that Mrs. Bradley's title by possession as mortgagee had not been held by the State court to have been cut off by the statute of 1872, as the record in that court stood, as reported in 186 Ill. 510, and that, therefore, the constitutional question did not arise. If, however, the Supreme Court had ruled that her title as mortgagee in possession had been so destroyed, the remedy was by writ of error from the Supreme Court of the United States. The decision in 201 Ill. 511, was rendered February 18, 1903. Taking into view the controversy as presented in the two other cases, and that the judgments in those cases are now directed to be reversed, and bearing in mind that a case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the State court, the decree of the Circuit Court will be

Affirmed.